2372.

SUPREME COURT OF THE UNITED STATES.

No. 165.

ALEXANDER M. SHARP, SAMUEL D. HENDERSON, ET AL., STOCKHOLDERS, &c., APPELLANTS.

vs.

GEORGE A. LYONS, ROBERT IRVINE, ET AL., DIRECTORS OF THE CARLISLE BANK.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DIST. OF PENNSYLVANIA.

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J. & G. S. Gideon, printers.

Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1848.

It is thus contained:

To the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, sitting in equity:

John M. Krebs, a citizen of the State of New York, who sues in his own name, as well as in the names and on the behalf of such other persons, stockholders of the late Carlisle Bank, as shall come in and become parties hereto, and contribute to the expenses of the same, brings his bill against George A. Lyon, Robert Irvine, George Metzgar, Jacob Shrom, Philip Weaver, David Duncan, Jacob Hershe, Thomas Urie, John Reed, John Brown Parker, Robert Laird, William Irvine, and William Baker, directors of the Carlisle Bank, and citizens of the said eastern district of Pennsylvania.

And thereupon your orator complains and says, that whereas, by a late act of the general assembly of the Commonwealth of Pennsylvania, passed the 21st day of March, A. D. 1814, it was provided and enacted, inter alia, that a bank should be incorporated in the district of Cumberland, and State of Pennsylvania, the capital whereof should not exceed three hundred thousand dollars, to be divided into six thousand shares, of fifty dollars each, to be called the Carlisle Bank, and to be continued until the 1st day of April, A. D. 1825, and that the commissioners thereby appointed should enter in a book as follows: "We, whose names are hereunto subscribed, do promise to pay to the president and directors of the Carlisle Bank the sum of fifty dollars for every share of stock in said bank set opposite to our respective names, in such manner and proportions as shall be determined by the board of directors of said bank, in pursuance of an act of the general assembly, entitled an act regulating the banks. Witness our hands and seals the day of A. D. 18 ."

And by the same act it is provided, that when fifty or more persons in the said district shall have subscribed not less than half the number of shares aforesaid, and paid the sum of twenty per cent. on the amount so subscribed, the said commissioners shall certify, under their hands and seals, the names of the subscribers and the number of shares subscribed by each, together with the amount so actually paid to the governor of the commonwealth; and thereupon the governor shall, by letters patent under his hand and the seal of the State, create and erect the said subscribers into a body corporate and politic in deed and in law, by the name and style of the Carlisle Bank; and by such name they shall have continual succession, and shall be able to sue and be sued, and to purchase, have, hold, receive, possess, enjoy, and retain, to them and their successors, lands, tenements, and hereditaments, rents, goods, chattels, and effects, of whatsoever kind, nature, or quality, not ex-

ceeding in the whole the sum aforesaid, allotted to the said district, including the capital stock of said company, except such as may be held in security for debts; and the same from time to time to grant, demise, alien, or dispose of; to make and have a common seal; to make by-laws necessary and convenient for the government of said corporation; and generally to have and be invested with the duties, powers, rights, and privileges, which by the laws of said commonwealth belong to corporations.

And your orator further saith, that the governor of said commonwealth, being certified by the commissioners aforesaid of the compliance by the subscribers to the stock of said bank with all the requisitions of the act aforesaid, did, on the 11th day of May, A. D. 1814, by letters patent under his hand and the seal of said State, create and erect the subscribers aforesaid into a body politic and corporate in deed and in law, by the name and style of the Carlisle Bank.

And whereas by the same act it is provided that, on the third Monday of November next ensuing, the day last aforesaid, that thirteen directors shall be elected by ballot, by the stockholders, for the well ordering of the affairs of said corporation, and so annually thereafter; and that the directors so elected shall, on the Monday succeeding their election, choose one of their number president of said bank, who shall continue in office one year, and until others be chosen and organized according to the provisions of said act.

Your orator further says, that the thirteen directors, one of whom was chosen president, were duly elected according to the provisions of said act, on the several days and years aforesaid, and have so continued to be duly elected on the same days of every year thereafter, for and during the whole time limited by the act aforesaid, for the existence of the said corporation, and for and during the whole time for which, by successive acts of the general assembly of the commonwealth aforesaid, to which reference will be hereafter made, the charter of said corporation was renewed and extended.

And your orator says, that, by the acts of the general assembly of the commonwealth aforesaid, and before the expiration of the said act of incorporation, to wit, on the 24th day of March, A. D. 1824, the charter of said bank was renewed and extended until the first Wednesday in May, A. D. 1835; and, on the 7th day of April, A. D. 1832, and before the expiration of the last mentioned act, the said charter was further renewed and extended until the first Wednesday of May, A. D. 1845; and that, during the whole period of the existence of said charter, under the provisions of the said several acts of the general assembly, and until the expiration of the same, on the first Wednesday of May, A. D. 1845, aforesaid, the said bank continued to hold and enjoy certain lands, tenements, and hereditaments, to make loans, deal in bills of exchange, issue notes, and, in satisfaction of debts previously contracted, receive certain mortgages, judgments, and other securities; to make dividends of the profits thereof, from time to time, as to the directors of said bank seemed expedient and proper; and to do and per-

form all other acts in the well ordering and conducting of the affairs of said bank, according to the provisions of the acts of assembly aforesaid.

And your orator further says, that, in pursuance of the said act and acts of assembly, and the by-laws made under the authority of the same, the directors of said bank, by the resolutions of their board, from time to time, from the organization of said bank until the 4th November, A. D. 1817, called upon the subscribers to the stock of said bank, and their legal assignees, to pay upon each share six several instalments of five dollars, amounting in the whole to thirty dollars upon each share of fifty dollars; and at a meeting of said board, held on the 8th day of April, A. D. 1828, it was resolved, that the cashier be authorized to give notice to the stockholders of said bank that the bank would receive any further payments that the said shareholders may wish to make on their stock, between the date last aforesaid and the first of January ensuing; and, on the 2d day of June, A. D. 1829, it appearing to the said board that the foregoing resolution promoted the interests of the bank, it was further resolved, unanimously, that the provisions and privileges of the said resolution should be continued until otherwise ordered by said board. The directors of said bank did not call upon the shareholders for the payment of any instalment beyond the sixth; but it appears, from the resolution last aforesaid, and from the books of said bank, that it was the custom and agreement of the board, during the existence of the charter of said bank, to receive from the shareholders any part of the instalments so as aforesaid called for, and any sums beyond the said instalments they might wish to pay, until the whole fifty dollars per share were fully paid; and that, accordingly, various amounts, ranging from seventeen dollars $\frac{2}{100}$ to fifty dollars per share, were paid in by their respective holders.

And your orator further says, that a certain David S. Forney, on the 5th day of September, A. D. 1837, being then the legal owner and holder of twenty shares of the stock of said bank, upon which fifty per cent. had been previously paid in, did, on the day and year last aforesaid, transfer the same on the books of said bank, for value received, to your orator, in presence of the president of said bank, and conformably to the provisions of the acts of assembly aforesaid; and that your orator did, on the 13th November, A. D. 1837, pay an additional instalment of five dollars per share on each of the twenty shares so transferred; and on the 14th June, A. D. 1838, the further instalment of five dollars upon each share; and on the 6th of November, A. D. 1838, the further instalment of fifteen dollars on each of his said shares; so that your orator held, on the day and year last aforesaid, twenty shares of the stock of said bank upon which fifty dollars had been duly paid upon each share, amounting in the whole to the sum of one thousand dollars.

And your orator further says, that, by the XXII article of the act of the general assembly of the 24th March, 1824, to which reference has been made, the corporate powers, rights, and privileges of said bank were, after the expiration of the charter had been granted and extended, continued in force for the liquidation and settlement of all its transac-

tions and accounts, and for no other purpose, until the same be fully liquidated and settled; and that, in proceeding to liquidate and settle the transactions and accounts of said bank, it was discovered by the directors of said bank, early in March, A. D. 1846, that the assets of said bank, after paying all their debts and liabilities, would be insufficient to return to the several shareholders the entire amount they had respectively paid into the capital stock of said bank, and which amounted in the whole to the sum of two hundred and twenty-six thousand seven hundred and forty dollars, ($226,740.) And the said board of directors, believing that the losses of the said bank might be from forty thousand to sixty thousand dollars, afterwards, to wit, on the 28th March, A. D. 1846—

Resolved, That a dividend of so much of the stock of this bank as is held by those stockholders who have paid more than thirty dollars on each share of stock held by them, respectively, as will entitle such stockholders to receive whatever sums they have respectively paid beyond thirty dollars on each share of stock held by them respectively, be, and is hereby, declared.

In pursuance of said resolution, sixty-six thousand nine hundred and sixteen dollars ($66,916) were divided among the stockholders designated in said resolution, by refunding to them, respectively, such sums as the bank had received on each share of stock held by them, respectively, beyond thirty dollars per share. When the said dividend was made, the two hundred and twenty-six thousand seven hundred and forty dollars of capital paid in was held as follows:

83 share-holders held 2,461 shares, on which fifty dollars per share were paid, amounting to	$123,050	
11 share-holders held 870 shares, on which from forty to forty-nine $\frac{6}{10}\frac{5}{0}$ per share were paid, amounting to	40,877	
11 share-holders had 462 shares, on which above thirty dollars to $39 $\frac{7}{10}\frac{7}{0}$ were paid, amounting to	16,779	
		$180,706
54 share-holders held 789 shares, on which above twenty-five to thirty dollars per share were paid, amounting to	$22,924	
43 share-holders held 931 shares, on which seventeen dollars $\frac{7}{10}\frac{5}{0}$ to $25 per share were paid, amounting to	23,110	
		46,034
Amount of capital paid in		$226,740

And your orator further says, that in pursuance of the resolution of the board last aforesaid, there were paid to him, on the 11th day of April, 1846, out of the said sixty-six thousand nine hundred and sixteen dollars, so as aforesaid distributed, twenty dollars upon each of his said twenty shares of stock, and that he still holds the said twenty shares of stock, with thirty dollars per share remaining unpaid thereon, and that he is justly entitled to receive his share and proportional part, according to the number of shares of stock of which he is the owner, of the undistributed moneys and effects in the hands of the said defendants, directors of said bank; and that the said directors are bound in equity and good conscience to distribute and pay to and among the stockholders of said bank, in proportion to their respective shares, and so as to equalize the losses to be sustained by each share of stock, the moneys and effect so remaining in their hands, which distribution and payment your orator well hoped the said defendants would long ere this have made, so that he might have received the share and proportion to which he was justly entitled. To the end, therefore, that the said defendants may show why your orator should not have the relief hereby prayed, and may upon their corporal oaths, and according to the best and utmost of their knowledge and belief, full, true, direct, and perfect answers make to the following interrogatories:

1. Whether the president and directors of the Carlisle Bank were incorporated by virtue of the letters patent issued on the 11th May, 1814, in pursuance of the act of the general assembly of the Commonwealth of Pennsylvania, passed the 21st March, 1814, and whether the said charter was not renewed and extended by the acts of the 24th March, 1824, and the 7th April, 1832; whether XXII article of the said act of 24th March, 1824, did not grant the power to the directors to liquidate and settle the transactions and accounts of said bank after the expiration of its charter; and whether its charter did not expire on the 7th May, 1845; and if not, by what other acts and letters patent was the said bank incorporated; what was its capital stock; into how many shares is it divided; how much is actually paid in, in what proportions; what was the business of the bank, and how long was it in operation?

2. Whether the narrative set forth in the bill of complaint of the terms and provisions of the several acts by which said bank was incorporated, and of the by-laws, acts, and proceedings of the board of directors, is substantially true; and what were the acts, by-laws, and proceedings of the board of directors relative to the subject of the complaint?

3. Whether the capital of said bank has been impaired, and to what extent; and whether the estate, real and personal, moneys and effects, in the hands of the directors are sufficient, after discharging all the debts and liabilities of the said bank, to repay to the share-holders the amount actually paid in; and if not, what will be the deficiency and loss?

4. Whether this complainant was, on the 5th September, 1837, a holder of twenty shares of stock of said bank; how much was paid

thereon, and how much has been since; and at what times paid thereon; and whether he is now the holder thereof; and what is his present interest in the stock of said bank?

5. Whether any distribution has been made among the share-holders of said bank; to what extent; and whether among all alike, or among a particular class; what amount has been so distributed; and what estate, moneys, and effects of said bank are now in your hands for distribution?

And that the said defendants be compelled, by a decree of this court, to distribute the funds, moneys and effects, and to pay to your orator such sums, as upon such division may be found to be his true and equitable proportion, according to the number of shares he holds in the capital stock of said bank; and that your orator may have such further and other relief in the premises as to your honors may seem meet, and this case may require.

May it please your honors to grant unto your orator the writ of subpœna directed to the said defendants, directors of the Carlisle Bank, thereby commanding them at a certain day personally to be and appear before this honorable court, and then and there full, direct, true, and perfect answer make to all and singular the premises, and further to stand and perform and abide such further order, direction, and decree therein, as to your honors may seem meet.

And your orator will ever pray, &c.

CHAS. B. PENROSE,
H. M. WATTS,
Solicitors for complainant.

Philadelphia, 11th October, 1847.

Answer.

To the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, sitting in equity:

In the case of the bill of John M. Krebs, a citizen of the State of New York, who sues in his own name, as well as in the names and behalf of such other persons, stockholders of the late Carlisle Bank, as shall come in and become parties thereto, and contribute to the expenses of the same, against George A. Lyon, Robert Irvine, George Metzger, Jacob Shrom, Philip Weaver, David Duncan, Jacob Hershe, Thomas Urie, John Reed, John Brown Parker, Robert Laird, William Irvine, and William Baker, directors of the Carlisle Bank, and citizens of the said eastern district of Pennsylvania, the following answers to the several interrogatories annexed to said bill are respectfully submitted.

Answer to plaintiffs' first interrogatory.

The subscribers to the stock of the Carlisle Bank were incorporated by virtue of the letters patent issued by the Governor of the Commonwealth of Pennsylvania, under his hand and the seal of the said commonwealth, on the eleventh day of May, one thousand eight hundred

and fourteen, to continue until the first day of April, one thousand eight hundred and twenty-five, in pursuance of the act of the general assembly of the Commonwealth of Pennsylvania, passed the twenty-first day of March, one thousand eight hundred and fourteen; and by the act of the general assembly of said commonwealth, passed the twenty-fifth day of March, one thousand eight hundred and twenty-four, the said Carlisle Bank was rechartered, to continue until the first Wednesday in May, one thousand eight hundred and thirty-five; and by the act of the general assembly of the said commonwealth, passed on the seventh day of April, one thousand eight hundred and thirty-two, the said charter was extended for the term of ten years from the first Wednesday in May, one thousand eight hundred and thirty-five. The term for which the charter of the said Carlisle Bank was extended by the said act of seventh April, one thousand eight hundred and thirty-two, expired on the first Wednesday (seventh) of May, one thousand eight hundred and forty-five. The twenty-second article of the third section of the act of twenty-fifth March, one thousand eight hundred and twenty-four, declares, that the corporate powers, rights, and privileges of said bank shall, after the expiration of the term for which said charter was granted for the liquidation and settlement of all its transactions and accounts, be and continue in force until the same be fully liquidated and settled. By the act of twenty-first March, one thousand eight hundred and fourteen, the capital of the said bank was limited to three hundred thousand dollars, divided into six thousand shares, of fifty dollars each; and the subscribers to the stock of said bank were required to sign the following written promise: "We whose names are hereunto subscribed do promise to pay to the president and directors of the Carlisle Bank the sum of fifty dollars for every share of stock in said bank set opposite to our respective names, in such manner and proportions as shall be determined by the board of directors of the said bank, in pursuance of the act of the general assembly entitled 'An act regulating banks.' Witness our hands the 21st day of April, 1814." It appears, from the books of the bank, that the bank was organized in June, one thousand eight hundred and fourteen; that from time to time between the organization of said bank and the eighteenth October, one thousand eight hundred and fifteen, the directors of the said bank called upon the stockholders to pay upon each share of their stock several instalments, amounting, in the aggregate, to twenty-five dollars upon each share; and on the fourth November, one thousand eight hundred and seventeen, the stockholders of the said bank were required by the directors to pay into bank, on or before the first day of December, one thousand eight hundred and seventeen, a sixth instalment of five dollars on each share, making the whole of the sums called for as aforesaid amount to thirty dollars on each share; but it does not appear that the directors required the stockholders to pay any instalment beyond the sixth, as above stated. The books of the bank show, however, that after June, one thousand eight hundred and fourteen, and prior to the fourth of November, one thousand eight hundred and seventeen, (the date of the call for the sixth instalment,)

several stockholders paid in different sums, on each share of their stock, of from less than one dollar to seventeen dollars and fifty cents per share, until thirty dollars were paid on each share thereof; and several other stockholders paid in different sums on each share of their stock between the said last mentioned dates, until various amounts, of from thirty-five to fifty dollars, were paid in on each share held by them respectively. And the books of the bank also show, that between the fourth of November, one thousand eight hundred and seventeen, and the eighth of April, one thousand eight hundred and twenty-eight, several stockholders paid in various sums on their stock, until at the date last mentioned there were more than one thousand shares held by thirty-seven stockholders, with above thirty to fifty dollars per share paid thereon; and more than one thousand shares were held by ninety stockholders, with but thirty dollars per share paid thereon; and that more than three thousand shares of the stock of said bank, having various sums less than thirty to below twenty dollars per share paid thereon, were held by more than one hundred stockholders. The book of minutes of the directors of said bank show, that at the stated meeting of directors held on Tuesday, the first of April, one thousand eight hundred and twenty-eight, it was proposed that notice be given to the stockholders that the whole, or any part of the balance due on their stock, will be received, and the same was laid over for consideration till next meeting. And the said book of minutes show, that at the stated meeting of directors held on Tuesday, the eighth of April, one thousand eight hundred and twenty-eight, the proposition which was laid over for consideration until this day was again brought before the board, when it was "Resolved, That the cashier be authorized to give notice to the stockholders of this bank that the bank will receive any further payments they may wish to make on their stock between this date and the first day of January next."

The books of the bank show that between the eighth of April, one thousand eight hundred and twenty-eight, and the first of January, one thousand eight hundred and twenty-nine, several stockholders paid in different sums on their stock, amounting to above four thousand dollars; and that between the last mentioned date and the second of June, one thousand eight hundred and twenty-nine, several stockholders paid in different sums on their stock, amounting to above one thousand nine hundred dollars. And the said book of minutes shows that at the stated meeting of directors, held on Tuesday, the second of June, one thousand eight hundred and twenty-nine, the following minute was made: "It appearing that the resolution of eighth April, one thousand eight hundred and twenty-eight, authorizing the stockholders in this bank to make such further payments on their stock as they might think proper, above the fifty per cent. already called in, expired on the eighth April last, the members now present are unanimously of the opinion that said privilege is promotive of the interests of this bank, and do recommend and agree to the said resolution being continued till otherwise directed by the board." The books of the said bank show that be-

tween the second of June, one thousand eight hundred and twenty-nine, and the expiration of the charter, in May, one thousand eight hundred and forty-five, more than ninety stockholders paid at different times, between said dates, various sums on more than three thousand shares of stock, until, with previous payments, different amounts were paid thereon of from twenty-five to fifty dollars per share, inclusive. It appears from the books of the bank that the capital actually paid in and held by the stockholders at the expiration of the charter, in May, one thousand eight hundred and forty-five, amounted to two hundred and twenty-six thousand seven hundred and forty dollars, divided into five thousand five hundred and thirteen shares, having various amounts per share, of from seventeen dollars and twenty-two cents to fifty dollars inclusive, paid thereon. The bank was in operation from June, one thousand eight hundred and fourteen, till seventh of May, one thousand eight hundred and forty-five, and during that period it was employed in the usual business of banking—chiefly in discounting notes, bills of exchange, receiving and paying out deposites, &c.

Answer to plaintiffs' third interrogatory.

The capital of the said bank has been impaired by various losses sustained in the course of its business—it is impossible now to say to what precise extent—but it is believed that the losses, after giving credit for the contingent fund on hand, will exceed forty thousand dollars, but how much more than forty thousand dollars cannot be known until the affairs of the bank are settled. The estate, real and personal, moneys and effects, in the hands of the directors, are not sufficient, after discharging all the debts and liabilities of the said bank, to repay to the stockholders the amount actually paid in on the shares respectively held by them, and the amount of the deficiency, it is believed, cannot be ascertained until the transactions and accounts of the bank are fully liquidated and settled.

Answer to plaintiffs' fourth interrogatory.

The books of the said bank show that the said complainant, John M. Krebs, was, on the fifth of September, one thousand eight hundred and thirty-seven, a holder of twenty shares of the stock of the said bank; and that David S. Forney, on the day last aforesaid, being then the holder of twenty shares of the stock of said bank, on which fifty per cent. had been previously paid in, did on the said day and year, agreeably to the acts of assembly aforesaid, and the usage of said bank, transfer the said twenty shares of stock on the transfer book of said bank to the said John M. Krebs, in the words following: "For value received, I do hereby assign and transfer unto the Rev. John M. Krebs twenty shares in the capital stock of the Carlisle Bank, on which fifty per cent. has been paid, subject to the payment of the remaining fifty per cent.

"Witness my hand this fifth day of September, 1837.

"$500. DAVID S. FORNEY.

"Test: GEO. A. LYON, *Pres't.*"

The books of the said bank show that the said John M. Krebs did, on the 13th November, 1837, pay in five dollars on each of the said twenty shares so transferred to him; and that on the 14th of June, 1838, he paid in the further sum of five dollars on each of the said shares; and that on the 6th of November, 1838, he paid in the further sum of fifteen dollars on each of his said shares; so that the said complainant held, on the day last aforesaid, the said twenty shares of the stock of said bank upon which fifty dollars per share were fully paid in as aforesaid, amounting in the whole to the sum of one thousand dollars; and that the said John M. Krebs still holds the said twenty shares of stock upon which thirty dollars per share remain unrefunded to him, which constitutes his present interest in the said bank.

Answer to plaintiffs' fifth interrogatory.

The books of the bank show that on the 7th of May, 1845, when the charter of said bank expired, the debts and liabilities of the said bank, consisting of moneys due to depositors, unredeemed Carlisle Bank notes, &c., amounted to ninety-eight thousand two hundred and nineteen dollars and seventy-six cents; that between the said 7th May, 1845, and the 28th of March, 1846, seventy-nine thousand four hundred and thirty-nine dollars and twenty-seven cents of the said debts and liabilities were paid out of the assets of the bank; and it being ascertained that after the payment of the said last mentioned sum, and reserving a fund for the payment of the balance of the said debts and liabilities, the remaining assets would not be sufficient to pay the whole of the capital paid in, as stated in the answer to complainants' third interrogatory; and it being also ascertained that after the payment made as aforesaid of the said sum of $79,439 27, and reserving a fund to pay the balance of the debts and liabilities aforesaid, funds amounting to sixty-six thousand nine hundred and sixteen dollars, being a portion of the remaining assets of the bank, were on hand and ready for distribution, the board of directors passed the following resolution on the 28th day of March, 1846, to wit: "Resolved, that a dividend of so much of the stock of this bank as is held by those stockholders who have paid more than thirty dollars on each share of stock held by them respectively, as will entitle each stockholder to receive whatever sums they have respectively paid beyond thirty dollars on each share of stock held by them respectively, be and is hereby declared." At the date of the above resolution, the $226,740 of capital paid in was held as follows:

One hundred and two stockholders held three thousand seven hundred and twenty-five shares, having different amounts above thirty dollars to fifty dollars per share paid thereon, making one hundred and seventy-eight thousand nine hundred and fifty-three dollars.

Forty-six stockholders held five hundred and seventy-eight shares, having thirty dollars per share paid thereon, making seventeen thousand three hundred and forty dollars.

Fifty-four stockholders held twelve hundred and ten shares, having different amounts, less than thirty dollars down to seventeen dollars and

twenty-two cents per share, paid thereon, making thirty thousand four hundred and forty-seven dollars. The said sum of $66,916 was not divided among all the stockholders alike; but it was divided among that class of stockholders who held shares on which more than thirty dollars per share were paid, by refunding to them, in pursuance of the said resolution of the 28th March, 1846, whatever sums were paid, above thirty dollars, on each of the shares respectively held by them. The complainant, John M. Krebs, being one of the stockholders who held twenty shares of said stock on which fifty dollars per share were paid, received from the said bank, out of the said sum of $66,916, twenty dollars on each of his said shares, in pursuance of said resolution. The book of transfers shows that all the assignments and transfers of stock made to the stockholders holding shares in said bank, on the said 28th March, 1846, on which less than fifty dollars per share were paid, at the dates of the respective assignments and transfers thereof, were made expressly subject to the payment of the balance unpaid thereon.

As to the estate, moneys, and effects of said bank, in the hands of the directors, it may be proper to state that there are various items of real estate belonging to the bank, consisting of several houses and lots, an interest of two-thirds in upwards of two thousand acres of mountain land, with two furnaces erected thereon, neither of which has been in operation for some time past; also the two-thirds of one farm, and the one-third of another farm, the interests in both of which farms have been sold per articles of agreement for nine thousand four hundred dollars, payable in instalments, possession to be delivered, and deeds and securities to be executed, on the first day of April, 1848. There are also various effects belonging to the bank, consisting of promissory notes, bonds, judgments, mortgages, State stocks, &c., remaining unpaid, the value of which cannot now be ascertained; and there is now money on hand for distribution amounting to twenty-three thousand five hundred dollars. The directors could have had more than twice the said sum of money ready for distribution before this time, if they had not received notice from different stockholders, who held shares on which but thirty dollars, or less, were paid per share, that they objected to the principles upon which the directors divided the said sum of $66,916, on the said 28th of March, 1846, and that some of them intended to bring suits for what they alleged would be their respective shares of the $66,916; which fund they contended should have been divided among all the stockholders pro rata on the amounts paid in on their respective shares; and though their counsel proposed to the bank to agree to a case stated in the nature of a special verdict to try the question, and requested the directors to let them have access to the bank books; believing that the judgment of a court of law upon a case stated in the name of one or all of the dissatisfied stockholders against the bank, or the directors individually, could not bind the other stockholders so as to protect the bank or directors against suits by any of such other stockholders, the directors declined making the bank a party in a case stated, but that the dissatisfied stockholders might, through their counsel, take an early opportunity of insti-

tuting proceedings in the only court in which the directors believed all the stockholders could be made parties, or have an opportunity of becoming parties, so as to make the decree of such court binding on the bank, the directors, and all and every of the classes of stockholders, whether they reside in our out of Pennsylvania. The book of minutes shows that, at a meeting of the board of directors held on Tuesday, the 29th day of September, 1846, the two following resolutions were passed:

"Resolved unanimously, that the officers of this bank be, and they are hereby, authorized to allow F. Watts and Jos. Knox, esquires, counsel for the complaining stockholders, to examine, in the banking-room, such of the proceedings, resolutions, and books of the bank, from its commencement, as the said counsel shall desire, for the purpose of giving them an opportunity of obtaining with as little delay as possible any information contained therein, which they may judge necessary for a proper exhibition of the claims of their clients."

"Resolved, that the president be, and hereby is, authorized to engage such counsel as he shall judge necessary to attend to the interests of the bank in any proceedings that may be instituted against it by the counsel of the complaining stockholders, and that such counsel for the bank be requested to afford every facility in their power to the complaining stockholders' counsel in the institution of their proceedings in the equity side of the circuit court of the United States for the eastern district of Pennsylvania, and in obtaining a decree of said court that will bind the bank and all the stockholders, with as little delay as practicable."

The counsel for the dissatisfied stockholders were informed that, in the hope that such a decision as would bind the bank, and all the stockholders, might be had as soon as practicable, the board had passed the resolution authorizing them to make the examination requested by them. One or other of the counsel, named in the resolution first above stated, accordingly, afterwards called at the bank on several different days, and examined such of the books, resolutions, and proceedings of the bank as they thought proper.

On the 19th day of December, 1846, four actions of assumpsit were instituted by one of said counsel in the court of common pleas of Cumberland county, to January term, 1847, against the Carlisle Bank; two of which are in the names of two of the dissatisfied stockholders who hold shares on which but thirty dollars per share are paid; and one of which is in the name of one who holds shares on which but twenty-five dollars per share are paid; and one of which is in the name of one who holds shares with but seventeen dollars and twenty-two cents per share paid; and, on the 22d December, 1846, another action of assumpsit was instituted by another counsel in the court of common pleas of said county, to January term, 1847, against the Carlisle Bank, in the name of another of the dissatisfied stockholders who holds shares on which but twenty-five dollars per share are paid. The notice before referred to, and the institution of the five actions above mentioned, induced the directors not to press the payment of several debts due to the bank, which were bearing interest, believing that it would be more for the benefit of

all the stockholders to let said debts remain on interest, than to collect them and have the money lying in bank unproductive, until the question raised by the dissatisfied stockholders should be settled by a judicial decision that would bind the bank and all the stockholders. Hence the small sum of money now on hand for distribution.

Answer to plaintiffs' second interrogatory.

As to the acts, by-laws, and proceedings of the board of directors relative to the subject of the complaint of the plaintiff, it may be proper to state that the by-laws of said bank do not contain any thing relative to said complaint, unless it be the fifth article thereof, which declares that "the books of transfer shall be closed ten days immediately preceding the first Tuesdays of May and November in each year; during which time the general account of the bank shall be balanced, for the purpose of ascertaining the expediency of declaring a dividend." In addition to the acts and proceedings of the board of directors stated in the answers to the first, fourth, and fifth interrogatories of plaintiff, which may be considered as relative to the subject of said complaint, the books of the bank show that between June, 1814, and the 7th May, 1845, there were fifty-eight dividends declared, averaging six per cent. and a fraction per annum. And in consequence of several stockholders inquiring when another dividend of the stock of the bank would be made, &c., the minutes of the proceedings of the board of directors show that, at a meeting of the board held on Tuesday, the 13th July, 1847, the following resolution was passed:

"*Resolved*, That the board of directors of this bank, anxious to protect the interests of the institution, and to do justice to all and each of the stockholders by distributing the assets of the bank among them agreeably to law and equity, deem it to be their duty to decline, and they accordingly do decline, to declare a dividend, or make a distribution of any further portion of the stock of this bank, until a judicial decision on the question raised by the complainants be made by some court whose decree thereon will at once bind and conclude all the stockholders, and protect the institution from further vexatious and expensive suits, either in law or equity."

The stockholders who inquired, either by letter or personally, when a dividend of a further portion of the assets would be made, were respectfully informed that the board of directors had declined to make a dividend of any further portion of the assets of the bank, until they could do so under the protection of a judicial decision upon the question raised by those stockholders who are dissatisfied with the dividend made in March, 1846, that will bind and conclude the bank, the directors, and all the stockholders.

The narrative set forth in the bill of complaint of the terms and provisions of the several acts by which said bank was incorporated, and of the by-laws, acts, and proceedings of the board of directors, is substantially true, so far as it substantially agrees with the foregoing answers given to the interrogatories annexed to said bill.

JOHN REED,
W. M. BIDDLE,
Solicitors for Defendants.

CUMBERLAND COUNTY,
In the Commonwealth of Pennsylvania, ss:

George A. Lyon, one of the above named defendants, and President of the Carlisle Bank above named, personally appeared before the subscriber, president judge of the court of common pleas, in and for the ninth judicial district of Pennsylvania, composed of the counties of Cumberland, Perry, and Juniata, and being duly sworn before me, deposes and says, that the facts set forth in the above and foregoing answer are true to the best of his knowledge and belief.

GEORGE A. LYON.

Sworn and subscribed at Carlisle, the 27th November, A. D. 1847, before me,

SAMUEL HEPBURN.

I, George A. Lyon, president of the Carlisle Bank above named, in virtue of a resolution of the directors of said bank, do certify, that the facts set forth in the above and foregoing answer are true to the best of my knowledge and belief.

Sealed with the common seal of the said corporation by virtue of the resolution aforesaid. November 27th, A. D. 1847.

Attest: GEORGE A. LYON, *President*.

I certify, that the foregoing was taken before me, president judge of the ninth judicial district of Pennsylvania, under the foregoing affidavit of George A. Lyon, esq., and the certificate under the seal of the corporation, dated the 27th November, A. D. 1847.

Witness my hand and seal, the same day last mentioned.

SAMUEL HEPBURN. [SEAL.]

Afterwards, to wit, on the 1st day of December, 1847, come the defendants, by their attorneys, John Reed and W. M. Biddle, and present their certain petition, which, being filed and read, is in the words following, to wit:

JOHN M. KREBS
vs.
GEORGE A. LYON, and others,
directors of the Carlisle Bank.

Bill in equity in the circuit court of the U. S., for the eastern district of Pennsylvania, No. 1, April session, 1848.

The petition of the defendants in this case respectfully represents, that, although they represent all the stockholders in the said bank, different interests in different classes of said stockholders may require them to be notified of the proceedings, that they may appear and defend their respective interests if they shall think proper; and, from their number, it would be inconvenient and expensive to bring them in as parties by the process of the court. The defendants, therefore, pray this honorable court to make an order authorizing them to give notice to the said

stockholders of the proceeding, by a publication of this petition and a decree thereon, for four weeks preceding the first day of April next, in one paper published in the city of Philadelphia, and in two papers published in the borough of Carlisle, and that the same shall be deemed competent notice.

For and on behalf of the said defendants.

JOHN REED,
W. M. BIDDLE,
Solicitors for defendants.

Whereupon the court make the following order:

December 1, 1847.—In the matter of the bill of complaint of John M. Krebs *vs.* George A. Lyon and others, directors of the Carlisle Bank, and the subpœna, issued out of the circuit court of the U. S., for the eastern district of Pennsylvania, No. 1, April session, 1848.

On the petition of the defendants setting out, although they represent all the stockholders of the said bank, that different interests in different classes of the said stockholders may require them to have notice of the proceeding, that they may appear and defend their respective interests if they shall think proper; and that, from their number, it would be inconvenient and expensive to bring them in as parties by the process of the court, and praying the court to make an order authorizing them to give notice to the stockholders of the proceeding by a publication of said petition, and a decree of the court thereon, for four weeks preceding the first day of April next, in one paper published in the city of Philadelphia, and in two papers published in the borough of Carlisle.

The court, having taken the same into consideration, make the order according to the said prayer of the petitioners.

Afterwards, to wit, on the 28th day of April, 1848, come the parties aforesaid, by their attorneys aforesaid, and present their certain agreement in writing, which, being read and filed, is in the words following, to wit:

In the matter of the bill in equity of Dr. John M. Krebs against the Carlisle Bank, the parties agree that the following facts shall be considered by the court as forming part of the bill and answers, as if they had been therein asserted and admitted.

The capital stock paid of the Carlisle Bank, in May, 1829, was one hundred and seventy thousand four hundred and eight dollars; in May, 1836, it was two hundred and sixteen thousand five hundred and twenty-seven dollars.

On the 12th April, 1836, the board of directors passed the following resolution:

"Resolved, That the president and cashier, or either of them, be, and hereby are, authorized to purchase fifty thousand dollars worth of the stock of the United States Bank at any price not exceeding 25 per cent. advance; and that the cashier be, and hereby is, authorized to pay the amount thereof out of the funds of this bank that may be in either Philadelphia or Baltimore at the time of said purchase."

On the 10th May, 1836, the president and cashier reported that the said stock to amount of five hundred shares had been purchased at a fraction above twenty-one per cent., making the whole sum paid for the same sixty thousand five hundred and forty dollars and thirty-one cents.

About forty-nine thousand dollars of this investment was lost to the Carlisle Bank by reason of the subsequent failure of the United States Bank.

There is no evidence that any general notice was given to the stockholders, by the cashier, of the resolutions of the 8th April, 1828, and 2d June, 1829, by which stockholders were authorized to pay a further amount upon their stock, as stated in the answers to the bill in this case.

FREDK. WATTS,
Attorney for stockholders.
WATTS & PENROSE,
For plaintiff.
JOHN REED,
Attorney for defendants.

28 APRIL, 1848.

And now, to wit, 28th day of April, 1848, this cause coming on for hearing and debate before the honorable Robert C. Grier, justice of the Supreme Court of the United States, holding a circuit court in the city of Philadelphia, in and for the eastern district of Pennsylvania, upon bill and answer, by which it appears that John M. Krebs, a citizen of the State of New York, complains against George A. Lyon, Robert Irvine, George Metzgar, Jacob Shrom, Philip Weaver, David Duncan, Jacob Hershe, Thomas Urie, John Reed, John Brown Parker, Robert Laird, William Irvine, and William Baker, directors of the Carlisle Bank, citizens of the eastern district of Pennsylvania. And the said John M. Krebs appeared by Henry M. Watts and Charles B. Penrose, his solicitors; and the said defendants, directors as aforesaid, appeared by John Reed and William M. Biddle, esquires, their solicitors; and that shareholders of the said bank, opposed in interest to the said complainant under the order of the said court, appeared by their solicitor, Frederick Watts, esquire, and become parties to this suit, and were heard; and it appeared as in the answer of the said defendants to the said bill of the said complainants, as in the said bill and answer is set forth, &c.

Now it is ordered, adjudged, and decreed, that the distribution made by the said defendants, directors as aforesaid, under and by virtue of the resolution of the said board of directors, passed on the 28th day of March, 1846, as set forth in the said answer, is equitable, just, and legal, and the same is hereby confirmed. And it is further ordered and decreed, that the said defendants, directors as aforesaid, do pay and distribute the sum of $23,500 now for distribution, as set forth in the said answer, to and among John M. Krebs and the shareholders or stockholders of the said bank, paying to each respectively, who may have paid in on the stock subscribed or held by him more than any other stockholder, the amount of such excess. And it is further ordered and

decreed, that the said defendants, directors as aforesaid, shall and do pay and distribute the assets of the said bank from time to time, as the same may be received and collected by them, to and among the said John M. Krebs and the said shareholders or stockholders, paying to each any snm he may have paid on each share of his stock more than any other stockholder or shareholder on each share of his stock, and so toties quoties, until the said stockholders are thus made equal in the amount paid in on their respective shares of stock; and that then the said defendants, directors as aforesaid, shall and do pay to the said John M. Krebs, and the said shareholders or stockholders, any balance or residue of assets which may be ready for distribution, an equal dividend or proportion thereof on each share of stock held by each stockholder respectively, so that each shareholder or stockholder shall receive an equal share or dividend of such residue on each share of stock held by him.

The defendants, directors aforesaid, shall and may, before making any distribution as aforesaid, deduct and retain, from time to time, the expenses of the care, management, and collection of the property and assets of the said bank and that the said defendants, the directors as aforesaid, shall and do pay the costs of this suit out of the funds of the said bank.

(Signed) R. C. GRIER.

JOHN M. KREBS
vs.
GEO. A. LYON et als.

In circuit court of the United States, in equity.

And now, to wit, 29th April, 1848, the court having made their decree, and it having been made to appear to the court that the following named persons, stockholders of the Carlisle Bank, to wit, Philip Bosserman, executor of Ephn. Bosserman, Thomas J. Bryan, James H. Dever, Michael G. Ege, James D. Greason, Jason W. Ely, executor of Lewis Harlan, Samuel D. Henderson, Samuel F. McCracken, B. McIntire, administrator of James Morrison, Elizabeth Stayman, Rev. Alexander Sharp, in his own right, and as administrator of John Sharp and Jane Sharp, Abm. Waggoner, Christiana Waggoner, and James Woodburn, are interested in the said decree to an amount exceeding two thousand dollars, they are therefore made parties to the proceeding, so as to allow them to enter an appeal to the Supreme Court of the United States, upon one or more of them entering into a bond with sufficient security, before the clerk of this court, in the penalty of one thousand dollars, conditioned for the payment of any costs and damages which may accrue by reason of their appeal.

(Signed) R. C. GRIER.

Circuit court of the United States, for the eastern district of Pennsylvania, in equity, of April sessions, 1848, No. 1.

JOHN M. KREBS, a citizen of the State of New York,
vs.
GEO. A. LYON et als., citizens of the State of Pennsylvania, and Alex. Sharp, Philip Bosserman, and others.

We, Alexander M. Sharp and Samuel D. Henderson, two of the stockholders of the Carlisle Bank named in the *proceeding*, as well in behalf of ourselves as of the other stockholders named in the order of the court, do hereby appeal from the decree of the circuit court of the United States to the Supreme Court of the United States.

Witness our hands, 5th May, 1848.

ALEXANDER SHARP,
S. D. HENDERSON.

Witness present—
FRED'K WATTS.

Appeal allowed, May 15, 1848. J. K. KANE.

UNITED STATES, *Eastern district of Pennsylvania, ss:*

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit in equity therein lately depending, between John M. Krebs, complainant, and George A. Lyon and others, defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said circuit court, at Philadelphia, this [L. S.] eighth day of July, A. D. 1848, and in the seventy-third year of the independence of the said United States.

GEORGE PLITT, *Clerk, C. C.*

UNITED STATES, *Eastern district of Pennsylvania, ss:*

I certify, that the foregoing attestation is in due form, and by the proper officer. J. K. KANE.

UNITED STATES, *Eastern district of Pennsylvania, ss:*

I certify, that the honorable John K. Kane, who has subscribed the foregoing certificate, was, at the time of subscribing such certificate, and still is, one of the judges of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, duly commissioned and qualified.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said circuit court, at Philadelphia, this [L. S.] eighth day of July, A. D. 1848, and in the seventy-third year of the independence of the said United States.

GEORGE PLITT, *Clerk, C. C.*

Filed July 28th, 1848.